



State of New Jersey

DEPARTMENT OF THE TREASURY

DIVISION OF PURCHASE & PROPERTY

OFFICE OF THE ASSISTANT DIRECTOR

P.O. BOX 230

TRENTON, NEW JERSEY 08625-0230

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Governor

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MEMORANDUM

TO: DIRECTORS OF ADMINISTRATION

FROM: ENRICO G. SAVELLI, Assistant Director

SUBJECT: *Revised Procurement Circular – REQUESTS FOR WAIVERS OF ADVERTISING (PC-25C; 7/1/99)*

DATE: July 1, 1999

Enclosed is a copy of the newly revised Procurement Circular entitled "Requests for Waivers of Advertising" which supersedes 90-25-GSA dated 7/1/90. Also enclosed is a copy of the newly revised "Request for Waivers of Advertising" Form PB 129-REV. 4/98.

This Circular has been updated to provide all necessary policies and procedures concerning waivers of advertising submission. The package contains new, more detailed instructions for the preparation and submittal of your "Request for Waiver of Advertising". The package also contains all forms required to submit a waiver package that meets all procurement and legal requirements. Please note that several of these are new or have been revised.

It is hoped that the inclusion of more detailed instructions as well as a complete set of up-to-date forms will increase the overall quality of your Department's waivers. This should in turn lessen the number of requests returned for additional information. Our timely receipt of properly completed waiver requests will allow us to reduce the overall processing time for these requests which results in better service to you.

The Bureau recognizes that certain requirements for the submission of a properly completed waiver form can be burdensome, particularly when time and resources are short. This relates to items such as Ownership Disclosure, Affirmative Action Compliance and Corporate Authority and Registration. These requirements can become laborious when multiple source waivers are involved. Unfortunately, these are legal requirements that must be met.

DIRECTORS OF ADMINISTRATION

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In response to Using Agency concerns, the Purchase Bureau is currently in the process of exploring these areas with the goal of developing a system that will enable these requirements to be searched and or properly verified using electronic means such as MACS-E, etc. You will be advised of any new developments in this area.

Any questions concerning this Circular should be directed to the Purchase Bureau contact and telephone number listed on the cover of this Circular. The Circular will also be available on the Internet and Infobank.

Please ensure that the Circular is distributed to all of the appropriate procurement and fiscal staff in your Department.

EGS/sm

C Lana Sims
Joseph Reilly
Angie Kern



CIRCULAR
STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY

No. PC-25C	ORIGINATING AGENCY: Division of Purchase and Property	PAGE 1 of 12
EFFECTIVE DATE: July 1, 1999	EXPIRATION DATE: Indefinite	SUPERSEDES: Circular No. 90-25-GSA dated 7/1/90
SUBJECT: REQUESTS FOR WAIVERS OF ADVERTISING		
ATTENTION: All Directors of Administration		
FOR INFORMATION CONTACT: Purchase Bureau Waiver Coordinator PURCHASE BUREAU WEBSITE: www.state.nj.us/treasury/purchase		PHONE: 633-2372 FAX: 292-0490

I. PURPOSE:

To provide guidelines, instructions and criteria for submitting requests for waivers of advertising, and to simplify paperwork and reduce processing time.

To advise all agencies of changes in procedures for the submission of waivers of advertising. The following forms are mandatory, and must be included with all waiver of advertising packages submitted to the Purchase Bureau:

- o Applicable Division of Purchase and Property's (DPP) Standard Terms and Conditions for products (PB-129P) and services (PB-129S)
- o Affirmative Action Compliance forms
- o Certification of MacBride Principles, Form PB-MACB
- o Notice of Set-Off for State Tax, Form PBTAX
- o Ownership Disclosure, Form PB-ODF.1

NOTE: IT IS THE USING AGENCY'S RESPONSIBILITY TO ENSURE THAT ALL VENDORS SOLICITED ARE IN RECEIPT OF THESE MANDATORY FORMS PRIOR TO THE VENDOR(S) SUBMISSION OF WAIVER QUOTATIONS TO YOUR AGENCY. ANY WAIVER OF ADVERTISING PACKAGE WHICH DOES NOT CONTAIN ALL OF THE ABOVE LISTED FORMS SHALL BE RETURNED TO THE REQUESTING AGENCY.

Proposed software/licensing agreements must be submitted to the Office of the Attorney General, specifically Deputy Attorney General John Chernoski at P.O. Box 112, Trenton, NJ 08625 (telephone 609-292-8564) **prior** to submitting the waiver package to the Office of Information

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Technology (OIT). These approvals must be completed **prior** to submitting the waiver of advertising package to the Purchase Bureau.

II. POLICY

A. STANDARD PROCEDURES: All products and services are to be purchased through the formal, advertised bidding process. **Waivers of formal advertising are an exception to this policy, and are expressly limited by statutory design.** No products or services are to be procured via Waiver of Advertising unless:

1. Prior written approval of Form PB-129 Request For Waiver of Advertising is received from the Purchase Bureau, or verbal authorization has been granted for public exigency purposes in cases of life/health/safety emergencies, pursuant to item II.,B of this circular.

IMPORTANT: AGENCIES SHOULD NOT INITIATE A WAIVER REQUEST AND SHOULD NOT PROCEED TO OBTAIN COMPETITIVE PROPOSALS UNTIL THEY HAVE THE REQUIRED AUTHORIZATION TO PROCEED BY THE ASSISTANT DIRECTOR, DIVISION OF PURCHASE & PROPERTY. THE DIVISION WILL DETERMINE WHETHER TO PURSUE FORMAL BIDDING FOR INFORMAL COMPETITION, OR THE INFORMAL COMPETITIVE PROCESS MAY BE DELEGATED TO THE USING AGENCY.

2. After an agency has been granted approval by the Purchase Bureau to obtain informal competition, informal competitive bidding must be obtained for all waiver of advertising procurements. Should the lowest bidder be bypassed, justification must be attached to the waiver form. Sole source requests must be fully documented.
3. Agencies should verify with the Purchase Bureau that waiver-requested products or services are not available under State contract.
4. Agency personnel who proceed to obligate the State for the procurement of goods and/or services without prior authorization may be held personally liable for the expenditure.

B. PUBLIC EXIGENCY REQUESTS: In cases where the life, safety or health of individuals must be sustained through the immediate performance of services or delivery of products, verbal authorization must be obtained from either the Director or Assistant Director, DPP **prior** to the actual purchase. If verbal approval is granted, agencies are to submit all required paperwork to the Purchase Bureau within three (3) working days of the approved request. **NOTE: FAILURE TO APPROPRIATELY PLAN PROCUREMENTS DOES NOT CONSTITUTE A PUBLIC EXIGENCY!**

POOR PLANNING IS A MAJOR FACTOR FOR REQUESTING WAIVERS OF ADVERTISING. AGENCIES ARE URGED TO ANTICIPATE THEIR NEEDS IN

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ORDER TO ALLOW SUFFICIENT TIME TO CONDUCT FORMAL ADVERTISED BIDDING THROUGH THE PURCHASE BUREAU.

- C. SUBMITTING THE WAIVER FORM:** All approved requests to waive formal advertising must be submitted on the **Request for Waiver of Advertising** Form PB-129. In order to process Form PB-129, the section designated **Part I - Must Be Completed By Requesting Agency** must be completed in its entirety and supplemented by documentation required by the form and this circular, and accompanied by the encumbrance request form (Form PB-6, Requisition-Purchase Bureau or Certification of Waiver Funding Availability, Form PB-129C). **All mandatory forms (see Item I. PURPOSE, page 1) must be submitted with the waiver package.** Copies of these forms are attached to this circular and may be reproduced, and additional forms are available through the Purchase Bureau Waiver Coordinator. This circular and the required forms are also located on the Purchase Bureau's website: www.state.nj.us/treasury/purchase

DELAYS IN PROCESSING WAIVER REQUESTS ARE PRIMARILY DUE TO THE REQUESTING AGENCY'S FAILURE TO PROVIDE COMPLETE AND PROPER DOCUMENTATION. FAILURE TO SUBMIT COMPLETE DOCUMENTATION OR MANDATORY FORMS WILL RESULT IN THE RETURN OF THE WAIVER PACKAGE TO THE REQUESTING AGENCY.

- D. VENDOR PERFORMANCE:** All complaints concerning the performance of vendors who are awarded purchase contracts via approved waivers of advertising must be submitted on Form PB-36, "New Jersey State Using Agency Formal Complaint Report" and forwarded to the DPP, Contract Compliance and Administration Unit for processing and resolution. Questions concerning the complaint process should be directed to the Agency Complaints Coordinator at 609-292-5400. Agency Complaint Form PB-36 and instructions are also available through the Purchase Bureau's website in the section designated for forms.

III. PROCEDURES, GENERAL INSTRUCTIONS & INFORMATION

- A. Part I - MUST BE COMPLETED BY USING AGENCY,** Items 1 through 15 of the waiver form must be fully completed by the requesting agency. Item 11 must be completed in detail, and documentation must be prepared and attached to support the request, pursuant to the guidelines listed in this circular. See Section IV. E, "Item 12-OTHER AGENCY APPROVALS" for waiver procurements that require pre-approval(s) from other state agencies.

"AGENCY REFERENCE NO." The waiver form (rev. 4/98) now contains a block in the upper right hand corner labeled "Agency Ref. No." This block is available for agency use as a means for agency document tracking. Please do not use the blocks labeled "(FOR PURCHASE BUREAU USE ONLY)".

MANDATORY FORMS: The following forms must be distributed to all vendors who will be solicited for competition. Vendors must complete these forms and submit with their solicitations,

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and they must be included with the waiver package. Copies are attached; additional forms are available through the Purchase Bureau Waiver Coordinator and the Purchase Bureau website.

- o **Standard Terms and Conditions.** Attach the applicable DPP Standard Terms and Conditions for products (Form PB-129P) or services (Form PB-129S).
- o **Ownership Disclosure.** An Ownership Disclosure Form (PD-ODF.1) must be completed by the vendor and submitted with the waiver form.
- o **Affirmative Action Compliance.** A current New Jersey Affirmative Action certificate or completed Form AA302, or a Federal Affirmative Action Approval letter must be submitted with the waiver form.
- o **MacBride Principle.** This form (No. PBMACB) is required for all procurements. Vendors must certify compliance with the MacBride Principles & Northern Ireland Act, 1989.
- o **Notice of Set-Off For State Tax.** This form (No. PBTAX) notifies all vendors that any entitlement to payment under a State contract where at the same time the vendor is indebted for any State tax or other debt to the State, the State Treasurer may set off that payment by the amount of indebtedness.

Corporate Authority and Registrations: Agencies must ensure that all vendors who are corporations have registered with the NJ Division of Revenue prior to conducting business with the State. In-state corporations must have a Certificate of Incorporation; firms incorporated outside of the State must obtain a Certificate of Authority to do business in the State **prior** to receipt of final contract award. Vendors can obtain forms by calling 609-530-6400, use option 2.

- B.** The completed waiver form, required attachments, and the completed encumbrance document (Form PB-6 Requisition or Certification of Waiver Funding Availability, Form PB-129C) must be forwarded directly to:

Purchase Bureau - Waiver Coordinator
P.O. Box 230
Trenton, NJ 08625
Telephone: 609-633-2372; Fax: 609-292-0490

A copy of the Form PB-129, "Request for Waiver of Advertising" is attached for your information and reference. The original is a 5-part NCR form, and all requests for waivers must be submitted on that form. This form may be obtained from the Waiver Coordinator at the above telephone number and address.

IV. GUIDELINES FOR COMPLETING THE WAIVER DOCUMENT

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The following guidelines correspond to each numbered item in “Part I - Request for Waiver of Advertising” form.

A. Items 1 through 4 are self-explanatory. For Item 5, agencies should ensure that the statutory citation(s) is accurate and sufficiently supported and documented in Item 14. Items 6 through 8 are self-explanatory.

B. Item 9 - “PROVIDE A BRIEF, CONCISE SUMMARY OF NATURE AND PURPOSE OF WAIVER.”

1. The agency must provide a clear, concise summary of the nature and purpose of the waiver. **Commence description on waiver form and continue on separate sheet if necessary, do not enter “See Attached” in this block.** The summary should include a statement of the scope of the service to be performed or the nature of the product to be purchased and what the agency would like to accomplish. Examples of acceptable statements are provided below:

- o "To purchase a used refrigerator truck to transport meals for inmates at various facilities to ensure uninterrupted delivery of prepared meals and milk, and for pickup of federal food surplus items."
- o "To continue the program of preserving and developing waterfowl habitat in order to prevent further reduction of waterfowl production and populations."
- o "To provide for the loading, transportation and disposal of debris that was not covered under the original scope of work to clean up the site at the XYZ Recycling and Scrap Metal location."

C. Item 10 - “EXPLAIN WHAT ATTEMPTS WERE MADE TO OBTAIN COMPETITION. “N/A” IS NOT ACCEPTABLE. ATTACH ALL PROPOSALS, PRICE QUOTATIONS, ETC. RECEIVED.”

1. Agencies are required to seek as much competition as reasonable and practical under the circumstances for each waiver requested. **Please commence explanation in this block and continue on separate sheet if necessary, do not enter “See Attached” in this block.** At least three (3) viable firms are to be invited to submit proposals. This information should include:

- o The number of firms contacted.
- o The method used in choosing firms contacted (i.e. industry data, previous experience, telephone directory, etc.).
- o The number of proposals received, including prices.

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- o The reasons for selecting the recommended vendor. In addition, all responses are to be evaluated and addressed as part of this submission.
- o Indicate in Item 10 that prior approval was granted by the Purchase Bureau to obtain competitive proposals, or that the Purchase Bureau has obtained competition on behalf of the using agency.

2. If the required product or service is available from only one source of supply, this should also be fully documented.
3. The results of all inquiries, including proposals, price quotations, denials, etc., must be attached to the waiver request form.

D. Item 11 - “WHAT ARE THE PROGRAM CONSEQUENCES OF NOT MEETING THE DELIVERY DATE GIVEN IN ITEM 6 ABOVE? SUPPORT WITH DOCUMENTATION.”

A brief, concise statement of the consequences of not meeting the desired delivery date noted in Item 6 must be provided. **Please commence description on waiver form and continue on separate sheet if necessary, do not enter “See Attached” in this block.** If there are no adverse consequences, the agency should indicate "none". Below are representative statements:

- o "That XXX number of handicapped students will not have occupational therapy."
- o "That funds in the amount of \$ XXX to be received under Federal Grant YYY will be lost because of ..."
- o "Without the purchase and supply of FDA approved drugs to XXX AIDS patients, the patients will experience a much lower quality of life with a significantly shortened lifespan, resulting in death."

Supporting documentation must also be included. The agency should also indicate whether better planning or foresight on their behalf could have prevented the requested waiver and what action will be taken to prevent future occurrences.

E. Item 12 - OTHER AGENCY APPROVALS

Procurement of professional and consultant(s) services, telecommunications, information technology, equipment hardware and software can only be made with the express approval of appropriate State agencies and as required under Circular No. 98-14-OMB/DPP/OTS. Failure to provide the required approval documents with the waiver will result in automatic rejection and return of the waiver request.

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- 1. Consultants and Professional Services** - All requests to hire consultants to perform professional services that exceed \$250,000 must be approved by the Office of Management and Budget (OMB) pursuant to Circular No. 98-14-OMB/DPP/OTS. Approval documents must be submitted with the waiver request.

A copy of the final report(s) required for all consultant services must be submitted to the Monitoring Unit, Office of Management and Budget. Please do not submit the reports to the Purchase Bureau.

- 2. Consultant Services and Approval of Telecommunications, Information Technology Consultant Services, Equipment Hardware and Software** - All waivers for services and equipment acquisitions for Telecommunications and/or Information Technology must be approved by OIT **prior** to submission to the Purchase Bureau for processing. Approval documents must be submitted with the waiver request.

- 3. Software/License Agreements** - Proposed software/license agreements must be submitted to the Office of the Attorney General, attentioned to D.A.G. John Chernoski at P.O. Box 112, Trenton, NJ 08625 (Telephone 609-292-8564) **prior** to submitting the waiver package to OIT and subsequently to the Purchase Bureau. **All software/license agreements or Information Technology/Professional Services contracts approved by the Attorney General's Office that are likely to approach or exceed \$250,000 must be forwarded to OMB for approval prior to submitting the waiver package to DPP.**

F. Item 13 - "VENDOR PROPOSALS/SCOPE OF WORK/RATES-PRICES/TERMS AND CONDITIONS"

A vendor proposal, which must also include the DPP mandatory forms, must be attached to the waiver document and signed by the vendor. In order to be accepted, each proposal must contain the following information:

FOR PRODUCTS:

- o DPP Standard Terms and Conditions for Products (Form PB-129P) and mandatory forms.
- o Total price, unit price or rental rate(s) including special terms.
- o Complete description of the item including the name, type, brand, model and catalog name, number and date.
- o Physical characteristics including height, weight, width, length, color, grade, size or thickness.
- o Special purchasing, delivery location or installation requirements such as addresses, training, availability of utilities or site preparation.
- o All special technical or performance specifications including vendor literature or performance data.

FOR PROFESSIONAL SERVICES:

- o DPP Standard Terms and Conditions for Services (Form PB-129S) and mandatory forms.

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- o Total price (time and material contracts are not acceptable).
- o Per diem rates by labor classification to include all general and administrative costs, overhead, and profit.
- o A detailed scope of work divided into the logical tasks and subtasks of the project.
- o A listing of the deliverable items that will be the end-products of the product.
- o A project schedule including milestone or key dates.
- o Corporate qualifications of the firm.
- o A project organization chart giving names of assigned vendor staff.
- o Resumes of vendor(s) assigned staff.
- o References - evidence of past experience on similar projects.
- o Name of state agency project manager.
- o Correct Commodity Code for Professional Services-Class 794

FOR TECHNICAL AND SUPPORT SERVICES:

- o DPP Standard Terms and Conditions for Services (PB-129S) and mandatory forms.
- o Total price (time and material contracts are not acceptable).
- o Method of payment (monthly, hourly, etc.).
- o Outline of services to be performed by type and frequency.
- o References - evidence of past experience on similar services.
- o In cases where State and Federal laws require licenses and certifications, proof of same must be submitted with quotations.

FOR MEDICAL OR HOSPITAL SERVICES:

- o DPP Standard Terms and Conditions for Services (PB-129S) and mandatory forms.
- o Total price.
- o Per diem or hourly rates.
- o Scope of services by type and frequency.
- o Names of individuals who will perform the required services.

G. Item 14 - "JUSTIFICATION STATEMENT"

The purpose of the Justification Statement is to support or to provide the legal basis for the statutory citation(s) noted in Part I, Item 5 in justifying your waiver request. Please note that some waivers will apply to more than one statutory citation. Using agencies are encouraged to enter all applicable citations on the form. The following guidelines identify the nature and type of information that should be included in the Justification Statement for each statutory citation.

52:34-9(a) - Services to be performed are of a technical and professional nature

1. Waivers are not routinely granted for technical and professional services unless the following condition prevails and is documented by the using agency. **Note:** Poor planning and agency-created emergencies are not appropriate justifications for requesting a waiver of advertising.

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- o Competitive specifications, placing all potential bidders on an equal footing, cannot be developed because the scope of work is highly complex, technical, unique or specialized.

52:34-9(b) - The purchase of perishable foods or subsistence supplies.

This citation should not be used by agencies except in the case of purchasing perishable or subsistence foods which are not available through Distribution and Support Services (DSS) or an existing State contract. Perishable or subsistence foods are those which spoil or deteriorate rapidly, i.e. fresh vegetables, meats, fish, dairy products and bread items.

52:34-9(c) - The lease of such office space, office machinery, specialized equipment, buildings or real property as may be required for the conduct of the State's business.

These items must be competitively bid unless the following condition prevails and is documented by the using agency:

- o Competitive specifications, placing all potential bidders on an equal footing, cannot be developed because the scope of work is highly complex, technical, unique or specialized and/or there is insufficient lead time to develop the bid specifications.

52:34-9(d) - The acquisition of any real property by gift, grant purchase or any other lawful manner in the name of and for the use of the State for the purpose of the State's business in accordance with appropriations made therefor when monies are required for the acquisition.

This citation is reserved for use by DPP only. Agencies should not request the use of this citation without prior consultation with the Purchase Bureau.

52:34-9(e) - Supplies or services, for which the prices after advertised bidding are not reasonable or have not been independently arrived at in open competition.

This citation is reserved for use by DPP only. Agencies should not request the use of this citation.

52:34-10(a) - The purchase is to be made from, or the contract to be made with, the Federal or any State Government or any agency or political subdivision thereof.

Justification should focus on price competitiveness, including documentation of the contractor's qualifications as a federal, state, political subdivision, quasi-state or other governmental entity.

52:34-10(b) - The public exigency requires the immediate delivery of the articles or performance of the service.

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1. Waivers are granted for public exigency when the following conditions prevail and are documented by the using agency:

- o Competition is not practical or cannot be obtained.
- o A potential health or safety hazard exists.
- o A critical agency mandate, statutory or operational requirement must be fulfilled.
- o Competitive specifications, placing all bidders on an equal footing, cannot be developed because sufficient lead time to develop bid specifications is not available, and would impact health and safety.

2. Agencies should describe the above circumstances with clear and concise details, and focus their justification on the consequences of nondelivery of the product or service within the time frame specified by the using agency (Use Item 11 on the waiver form).

POOR PLANNING DOES NOT CONSTITUTE PUBLIC EXIGENCY.

52:34-10(c) - Only one (1) source of supply is available.

Use Item 10 on the waiver form to document why the recommended contractor is the only available source that can provide the item or services required, and why seemingly comparable products do not satisfy the documented needs of the agency. A thorough explanation should be included as to what attempts were made to obtain competition and the results.

52:34-10(d) - More favorable terms can be obtained from a primary source of supply.

1. This citation should be used in cases where the intended purchase will be made directly from the prime manufacturer or supplier at a reduced cost which results from the elimination of middlemen, i.e., distributors, dealers and jobbers. This citation can also be used when special or spot purchases are attainable at reduced cost or with more favorable delivery schedules.
2. Justification should focus on the cost-benefits of obtaining the more favorable terms of price reduction and delivery and why they are necessary or desirable.

52:34-10(e) - Articles of wearing apparel which are styled or seasonal in character.

This citation is reserved for use by DPP only. Agencies should not request the use of this citation.

52:34-10(f) - Commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action.

This citation is reserved for use by DPP only. Agencies should not request the use of this citation.

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52:34-10(g) - The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest.

These items will be competitively bid unless the following conditions prevail and are documented by the using agency:

- o Competitive specifications, placing all potential bidders on equal footing, cannot be developed because the scope of work is unique or highly specialized and/or there is insufficient lead time to develop the bid specifications. **(Poor planning is not a justifiable reason.)**
- o Alternate equipment or replacement parts will not function and perform at the level of service or quality required.

H. Item 15 - “DEPARTMENT CERTIFICATION”

1. One of the three appropriate boxes must be checked indicating whether the waiver request is not a confirming waiver, an authorized confirming waiver or an unauthorized confirming waiver. To qualify as a confirming waiver, the vendor (prior to submission of the waiver document) has been authorized to proceed with delivery of the product or service, and verbal authorization has been granted by DPP (see **SECTION I. CONFIRMING WAIVERS** below).
2. Signature of Department Head and the Date must be completed in this block.

I. CONFIRMING WAIVERS

A confirming waiver is defined as a waiver request whereby the recommended contractor/vendor has already been authorized by the using agency to provide the required goods/services. There are two types of confirming waivers:

1. **Authorized Confirming Waivers.** Authorized confirming waivers are considered in cases where there is a critical and immediate need to provide a service or a product which would have a direct impact on the health and safety of an individual(s). Authorization must be obtained from the Director or Assistant Director, DPP. Once verbal authorization is granted, the waiver request form (accompanied with the required documentation) should be submitted within three (3) working days of the verbal approval. Verbal approval will be granted only on the condition that the requesting agency has the necessary appropriations to process payment.
2. **Unauthorized Confirming Waivers.** Unauthorized confirming waivers of advertising are a violation of the provisions of Title 52. The department head and the individual responsible for authorizing a purchase contract without the proper waiver of advertising approvals will assume full responsibility and/or liability for such action.

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o Where applicable, DPP will notify the department in writing of the violation. The Office of Legislative Services will also receive a copy of the correspondence for their information.

o In cases where the vendor has been authorized to proceed and prior approval has not been received from the Director or Assistant Director, DPP, the Department Head's signature certifies receipt of all or a portion of the products/services, and that the prices charged are reasonable.

3. All funding documents submitted for confirming waivers (Form PB-6 or Certification of Funding Availability, Form PB-129C) must include the language "**CONFIRMING WAIVER**" on the bottom of the form.

4. Confirming waivers do not relieve any agency of the responsibility for completion of the entire waiver request package. A confirming waiver request package must be submitted pursuant to the guidelines of this circular.

A check-off list has been attached to ensure accurate completion of the waiver form, including any required attachments such as DPP Standard Terms and Conditions, mandatory forms, documentation and approvals. This check-off list and forms may be reproduced.

E. IMPORTANT: AGENCIES ARE REMINDED THAT THE STATE CANNOT BE OBLIGATED FOR GOODS OR SERVICES WITHOUT PRIOR FUNDING AUTHORIZATION, AND CANNOT INCUR OBLIGATIONS THAT ARE IN EXCESS OF THE APPROPRIATIONS AND LIMITS OF EXPENDITURE AS REQUIRED BY LAW. SUCH VIOLATIONS MAY BE SUBJECT TO THE CRIMINAL PENALTIES AS PRESCRIBED IN N.J.S.A. 2C:30-4.

Attachments

Approved: _____
Lana J. Sims, Director
Div. of Purchase and Property

Date

WAIVER OF ADVERTISING CHECK LIST

- ☐ Has Part I, (Items 1 through 16) on Form PB-129 been completed in full?
 - o Approvals (Item 12) obtained from OMB for professional/consulting services; OIT for consultant services and telecommunications, information technology consultant service hardware or software
 - o Justification Statement (Item 14) completed as required
 - o Department Head's signature and date (Item 15)
- ☐ Was competition (quotations) obtained from a minimum of three (3) firms?
- ☐ Are all vendors' quotations attached including prices and signatures, with DPP Standard Terms and Conditions for products (PB-129P) or services (PB-129S), and mandatory forms?
- ☐ If the lowest bidder is being bypassed, is justification attached?
- ☐ If firm is out-of-state corporation, is registration completed with the Division of Revenue? (This can be verified by calling Commercial Recording at 609-530-6400, and select option #2. Forms can be obtained through the State's web site www.state.nj.us, click on New Jersey Business Gateway Services, then click on to forms.)
- ☐ Are mandatory forms included with vendors quotes and attached to waiver package?
 - o Applicable DPP Standard Terms and Conditions
(For Products – Form PB-129P; For Services – PB-129S)
 - o Ownership Disclosure Form No. PB-ODF.1
 - o Current NJ Affirmative Action Certificate, completed Form AA302 or Federal Affirmative Action Approval letter
 - o MacBride Principle, Form No. PBMACB
 - o Notice of State Set-Off Tax, Form No. PBTAX
- ☐ For professional services procurements, are the following items included?
 - o Consultant(s) resume
 - o Total pricing and rates
 - o Detailed scope of work
 - o Project schedule, including milestones
 - o Identification of State Agency Project Manager
 - o DPP Standard Terms and Conditions for Services (PB-129S)
 - o Proper Commodity Code applied, usually Class 794
- ☐ Are all funding documents completed with proper descriptions?
 - o Is Requisition (PB-6) or Certification of Waiver Funding Availability (PB-129C) completed and attached ?
- ☐ If confirming waiver, is Item 15, Block No. 2 checked? Is an explanation attached to the Justification Statement stating whether waiver was previously authorized by DPP?

STATE OF NEW JERSEY REQUEST FOR WAIVER OF ADVERTISING DEPARTMENT OF THE TREASURY • DIVISION OF PURCHASE AND PROPERTY		Agency Ref. No.: _____ (FOR PURCHASE BUREAU USE ONLY) Waiver No.: _____ Category: _____ Document No.: _____
INSTRUCTIONS: Complete and answer ALL ITEMS 1 thru 15 or write "Not Applicable". See reverse side for statutory citations and refer to current waiver procurement circular for detailed instructions.		

PART I—MUST BE COMPLETED BY REQUESTING AGENCY											
1. Using Agency (Include Department)		2. Agency Contact									
3. Telephone No.: _____ Fax No.: _____		4. Recommended Vendor (Name and Address)									
5. Statutory Citation(s) N.J.S.A. 52:34 _____		6. Date Item/Service Needed									
7. Funding Source		8. Total Amount Requested:									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 25%;">Fiscal Yr.</th> <th style="width: 25%;">State</th> <th style="width: 25%;">Fed.</th> <th style="width: 25%;">Other</th> </tr> <tr> <td style="height: 30px;"></td> <td style="text-align: center;">%</td> <td style="text-align: center;">%</td> <td style="text-align: center;">%</td> </tr> </table>		Fiscal Yr.	State	Fed.	Other		%	%	%	\$ _____	
Fiscal Yr.	State	Fed.	Other								
	%	%	%								
9. Provide a brief, concise summary of nature and purpose of waiver.											
<input type="checkbox"/> Check here if continued on separate sheet.											
10. Explain what attempts were made to obtain competition. "N/A" is not acceptable. Attach all proposals, price quotations, etc. received.											
<input type="checkbox"/> Check here if continued on separate sheet.											
11. What are the program consequences of not meeting the delivery date given in Item 6 above? (Support with documentation)											
<input type="checkbox"/> Check here if continued on separate sheet.											
▼ Answer Questions 12, 13 and 14 by checking proper column at right.		YES	N/A								
12. If required under Circular No. 98-14-OMB/DPP/OTS, have the following approvals been sought: (a) OMB for professional services; (b) OTIS for consultant services and approval of Telecommunications, Information Technology Consultant Services, equipment and software?		(a)	(b)								
13. Is a vendor proposal(s) attached detailing the scope of work or item description, including an explanation of rates/prices and terms and conditions?											
14. Is the Justification Statement, required by the current Waiver Procurement Circular, explaining the circumstances of emergency biddability, compatibility, more favorable terms and/or market conditions necessitating this waiver attached?											
15. DEPARTMENT CERTIFICATION: I certify to the accuracy of the above statements and to the following as indicated:		<input type="checkbox"/> This is not a confirming waiver. <input type="checkbox"/> This is an authorized confirming waiver. My signature certifies receipt of all or part of the item/service and that the prices charged were reasonable. <input type="checkbox"/> This is an unauthorized confirming waiver.									
_____ (Signature of Department Head)		_____ (Date)									

PART II—TO BE COMPLETED BY DIVISION OF PURCHASE AND PROPERTY						
A. Are the goods or services to be purchased available under an existing State Contract? <input type="checkbox"/> Yes <input type="checkbox"/> No Are the prices reasonable compared to other contracts for similar goods or services? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A Are there any formal complaints on file against the vendor(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, give status of complaint(s)) Are terms and conditions attached to the proposal? <input type="checkbox"/> Yes <input type="checkbox"/> No			OTIS APPROVAL:		OMB APPROVAL LETTER? <input type="checkbox"/> Yes <input type="checkbox"/> No	
CERTIFICATIONS	Citation(s): N.J.S.A. 52:34 _____		Competition sought? <input type="checkbox"/> Yes <input type="checkbox"/> No		Competition Received? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Ownership Disclosure: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		Out of State Corp. Registered? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		Affirmative Action Compliance <input type="checkbox"/> Yes <input type="checkbox"/> No	
	McBride Principle <input type="checkbox"/> Yes <input type="checkbox"/> No		Amount Not To Exceed: \$ _____			
	Certified By: _____ <div style="display: flex; justify-content: space-between;"> (Unit Supervisor) (Date) </div>					
B. Recommendations for Approval 1. _____ <div style="display: flex; justify-content: space-between;"> (Purchase Bureau Supervisor) (Date) </div> 2. _____ <div style="display: flex; justify-content: space-between;"> (Director—Div. Purchase & Property) (Date) </div>			C. Legal: This Waiver is approved as to legal sufficiency. _____ <div style="display: flex; justify-content: space-between;"> (Deputy Attorney General) (Date) </div> D. Approved by State Treasurer <div style="display: flex; justify-content: space-between;"> _____ Date </div>			

- I. Unless the bidder is specifically instructed otherwise in the Request for Proposal, the following terms and conditions will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the Request for Proposal (RFP) and should be read in conjunction with same unless the RFP specifically indicates otherwise. If a bidder proposes changes or modifications or takes exception to any of the State's terms and conditions, the bidder must so state specifically in writing in the bid proposal. Any proposed change, modification or exception in the State's terms and conditions by a bidder will be a factor in the determination of an award of a contract or purchase agreement.
- II. All of the State's terms and conditions will become apart of any contract(s) or order(s) awarded as a result of the Request for Proposal, whether stated in part, in summary or by reference. In the event the bidder's terms and conditions conflict with the State's, the State's terms and conditions will prevail, unless the bidder is notified in writing of the State's acceptance of the bidder's terms and conditions.
- III. The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- IV. If awarded a contract or purchase agreement, the bidder's status shall be that of any independent principal and not as an employee of the State.

1.STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

- 1.1 CORPORATE AUTHORITY - All New Jersey corporations must obtain a Certificate of Incorporation from the Office of the Secretary of State prior to conducting business in the State of New Jersey.

If a bidder is a corporation incorporated in a state other than New Jersey, the bidder must obtain a Certificate of Authority to do business from the Office of the Secretary of State prior to receipt of final contract award. Within seven (7) days of receipt of a notice of intent to award the successful bidder shall provide either certification or notification of filing with the Secretary of State. Failure to comply will result in the State's withdrawing of the notice of intent to award.

If the bidder awarded a contract or purchase agreement is an individual not residing in this state or a partnership organized under the laws of another state, then the bidder shall execute a power of attorney designating the State Treasurer as his true and lawful attorney to receive process in any civil action which may arise out of the performance of this contract or agreement. This appointment of the State Treasurer shall be irrevocable and binding upon the bidder, his heirs, executors, administrators, successors or assigns. Within ten(10) days of receipt of this process, the Treasurer shall forward same to the bidder at the address designated herein.

- 1.2 ANTI-DISCRIMINATION - All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder.
- 1.3 PREVAILING WAGE ACT - The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act.
- 1.4 AMERICANS WITH DISABILITIES ACT - The contractor must comply with all provisions of the Americans With Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.
- 1.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT - the provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the Act.
- 1.6 OWNERSHIP DISCLOSURE - Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.7 COMPLIANCE - LAWS - The contractor must comply with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed here under.
- 1.8 COMPLIANCE - STATE LAWS - It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 1.9 COMPLIANCE - CODES - The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor will be responsible for securing and paying all necessary permits, where applicable.

2.LIABILITIES

- 2.1 LIABILITY - COPYRIGHT - The contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- 2.2 INDEMNIFICATION - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgements and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
- 2.3 INSURANCE - The contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. The contractor shall provide the State of New Jersey with current certificates of insurance for all coverages and renewals thereof which must contain the proviso that the insurance provided in the certificate shall not be cancelled for any reason except after thirty days written notice to:

STATE OF NEW JERSEY
Purchase Bureau - Bid Ref.#

The insurance to be provided by the contractor shall be as follows.

- a. General liability policy as broad as the standard coverage forms currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall be endorsed to include:

1. BROAD FORM COMPREHENSIVE GENERAL LIABILITY
2. PRODUCTS/COMPLETED OPERATIONS
3. PREMISES/OPERATIONS

The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$100,000 BODILY INJURY, EACH OCCURRENCE
\$100,000 DISEASE EACH EMPLOYEE
\$500,000 DISEASE AGGREGATE LIMIT

3. TERMS GOVERNING ALL PROPOSALS TO NEW JERSEY PURCHASE BUREAU

- 3.1 CONTRACT AMOUNT - The estimated amount of the contract(s), when stated on the Advertised Request for Proposal form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of this Request for Proposal or any contract entered into as a result of this Request for Proposal.

- 3.2 CONTRACT PERIOD AND EXTENSION OPTION - If, in the opinion of the Director of the Division of Purchase and Property, it is in the best interest of the State to extend any contract entered into as a result of this Request for Proposal, the contractor will be so notified of the Director's intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the contract. If the contractor agrees to the extension, all terms and conditions of the original contract, including price, will be applicable.

3.3 BID AND PERFORMANCE SECURITY

- a. Bid Security - If bid security is required, such security must be submitted with the bid in the amount listed in the Request for Proposal, see N.J.A.C. 17:12-2.2. Acceptable forms of bid security are as follows:

1. A properly executed individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.

2. The State will hold all bid security during the evaluation process. As soon as is practicable after the completion of the evaluation, the State will:

- a. Issue an award notice for those offers accepted by the State;
- b. Return all bond securities to those who have not been issued an award notice.

All bid security from contractors who have been issued an award notice shall be held until the successful execution of all required contractual documents and bonds (performance bond, insurance, etc). If the contractor fails to execute the required contractual documents and bonds within thirty (30) calendar days after receipt of award notice, the contractor may be found in default and the contract terminated by the State. In case of default, the State reserves all rights inclusive of, but not limited to, the right to purchase material and/or to complete the required work in accordance with the New Jersey Administrative Code and to recover any actual excess costs from the contractor. Collection against the bid security shall be one of the measures available toward the recovery of any excess costs.

- b. Performance Security - If performance security is required, the successful bidder shall furnish performance security in such amount on any award of a term contract or line item purchase, see N.J.A.C. 17:12-2.3. Acceptable forms of performance security are as follows:

1. The contractor shall be required to furnish an irrevocable security in the amount listed in the Request for Proposal payable to the Treasurer, State of New Jersey, binding the contractor to provide faithful performance of the contract.

2. The performance security shall be in the form of a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.

The Performance Security must be submitted to the State within 30 days of the effective date of the contract award and cover the period of the contract and any extensions thereof. Failure to submit performance security may result in cancellation of contract for cause pursuant to provision 3.5b,1, and nonpayment for work performed.

- 3.4 VENDOR RIGHT TO PROTEST - INTENT TO AWARD- Except in cases of emergency, bidders have the right to protest the Director's proposed award of the contract as announced in the Notice of Intent to Award, see N.J.A.C. 17:12-3.3. Unless otherwise stated, a bidder's protest must be submitted to the Director within 10 working days after receipt of written notification that his bid has not been accepted or that an award of contract has been made. In the public interest, the Director may shorten this protest period, but shall provide at least 48 hours for bidders to respond to a proposed award. In cases of emergency, stated in the record, the Director may waive the appeal period. See N.J.A.C. 17:12-3 et seq.

3.5 TERMINATION OF CONTRACT

a. Change of Circumstances

Where circumstances and/or the needs of the State significantly change, or the contract is otherwise deemed no longer to be in the public interest, the Director may terminate a contract entered into as a result of this Request for Proposal, upon no less than 30 days notice to the contractor with an opportunity to respond.

In the event of such termination, the contractor shall furnish to the using agency, free of charge, such reports as may be required.

b. For cause:

1. Where a contractor fails to perform or comply with a contract, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.

2. Where a contractor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping etc., so that the Director is repeatedly required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq. the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.

c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

d. In the event of termination under this section, the contractor will be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

3.6 COMPLAINTS - Where a bidder has a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause pursuant to 3.5b a bidder may be bypassed for this award. See N.J.A.C. 17:12-4.8.

3.7 EXTENSION OF CONTRACT QUASI-STATE AGENCIES - It is understood and agreed that in addition to State Agencies, Quasi-State Agencies may also participate in this contract. Quasi-State Agencies are defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

3.8 EXTENSION OF CONTRACTS TO POLITICAL SUBDIVISIONS, VOLUNTEER FIRE DEPARTMENTS AND FIRST AID SQUADS, AND INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION - N.J.S.A. 52:25-16.1 permits counties, municipalities and school districts to participate in any term contract(s), that may be established as a result of this proposal.

N.J.S.A. 52:25-16.2 permits volunteer fire departments, volunteer first aid squads and rescue squads to participate in any term contract(s) that may be established as a result of this proposal.

N.J.S.A. 52:25-16.5 permits independent institutions of higher education to participate in any term contract(s) that may be established as a result of this proposal, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500.

In order for the State contract to be extended to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education the bidder must agree to the extension and so state in his bid proposal. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.

3.9 EXTENSIONS OF CONTRACTS TO COUNTY COLLEGES - N.J.S.A. 18A:64A-25.9 permits any college to participate in any term contract(s) that may be established as a result of this proposal.

3.10 EXTENSIONS OF CONTRACTS TO STATE COLLEGES - N.J.S.A. 18A:64-60 permits any State College to participate in any term contract(s) that may be established as a result of this proposal.

3.11 SUBCONTRACTING OR ASSIGNMENT - the contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of the Director of the Division of Purchase and Property. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract.

In the event the bidder proposes to subcontract for the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an itemization of the products and/or services to be supplied by them.

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the State.

3.12 MERGERS, ACQUISITIONS - If, subsequent to the award of any contract resulting from this Request for Proposal, the contractor shall merge with or be acquired by another firm, the following documents must be submitted to the Director, Division of Purchase & Property.

a. Corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices.

b. State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to provision 1.5.

c. Vendor Federal Employer Identification Number.

The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of contract pursuant to provision 3.5b.

If, subsequent to the award of any contract resulting from this Request for Proposal, the contractor's partnership or corporation shall dissolve, the Director, Division of Purchase & Property must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment should be made until all parties to the dissolved partnership or corporation submit the required documents to the Director.

3.13 PERFORMANCE GUARANTEE OF BIDDER -The bidder hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the Request For Proposal from time of written acceptance by the State. <The bidder will render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period, the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

3.14 DELIVERY GUARANTEES - Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Request for Proposal.

The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract, and in accordance with good commercial practice.

Items delivered must be strictly in accordance with the Request for Proposal.

In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Request for Proposal, the using agency may be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.

3.15 DIRECTOR'S RIGHT OF FINAL BID ACCEPTANCE - The Director reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie bids will be awarded by the Director in accordance with N.J.A.C. 17:12-2.6.

3.16 BID ACCEPTANCES AND REJECTIONS - The provisions of N.J.A.C. 17:12-2.4, relating to the Director's right to waive minor elements of non-compliance with bid specifications and N.J.A.C. 17:12-2.5 which defines causes for automatic bid rejection, apply to all proposals and bids.

3.17 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES - The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the contract.

The State may also consult with clients of the bidder during the evaluation of bids. Such consultation is intended to assist the State in making a contract award which is most advantageous to the State.

3.18 STATE'S RIGHT TO REQUEST FURTHER INFORMATION - The Director reserves the right to request all information which may assist him in making a contract award, including factors necessary to evaluate the bidder's financial capabilities to perform the contract. Further, the Director reserves the right to request a bidder to explain in detail how the bid price was determined.

3.19 MAINTENANCE OF RECORDS - The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

4. TERMS RELATING TO PRICE QUOTATION

4.1 PRICE FLUCTUATION DURING CONTRACT - Unless otherwise noted by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director of Purchase and Property must be notified in writing of any price reduction within five (5) days of the effective date.

Failure to report price reductions will result in cancellation of contract for cause, pursuant to provision 3.5b,1.

4.2 DELIVERY COSTS - Unless otherwise noted in the Request for Proposal, all prices for items in bid proposals are to be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

- 4.3 C.O.D. TERMS - C.O.D. terms are not acceptable as part of a bid proposal and will be cause for rejection of a bid.

- 4.4 TAX CHARGES - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

- 4.5 PAYMENT TO VENDORS - Payment for goods and/or services purchased by the State will only be made against State Payment Vouchers. The State bill form in duplicate together with the original Bill of Lading, express receipt and other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the using agency which will ascertain that the contractor has performed in a proper and satisfactory manner in accordance with the terms and conditions of the award. Payment will not be made until the using agency has approved payment.

For every contract the term of which spans more than one fiscal year, the State's obligation to make payment beyond the current fiscal year is contingent upon legislative appropriation and availability of funds.

- 4.6 NEW JERSEY PROMPT PAYMENT ACT - The New Jersey Prompt Payment Act N.J.S.A. 52:32-32 et seq. requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the state prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

- 4.7 RECIPROCITY - In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.11, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for their bidders.

5. CASH DISCOUNTS - Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest bid.

- a. Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services. received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.

- b. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

6. STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189(1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibility in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgement of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraph 6a. through 6e. shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 6c.

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT

Name: _____ Title: _____ Date: _____

**NEW JERSEY DIVISION OF PURCHASE AND PROPERTY
WAIVERED SERVICES CONTRACTS
STANDARD TERMS AND CONDITIONS**

By submitting a proposal in response to the Agency Request for services, the bidder certifies that it understands and agrees that all of the following terms, conditions and definitions (collectively, "Standard Terms and Conditions") are part of any contract(s) awarded or order(s) placed as a result of the Agency Request unless specifically and expressly modified by reference in the Agency Request or in a writing executed by the Director, Division of Purchase and Property or the designee thereof.

I. DEFINITIONS: As used in these Standard Terms and Conditions the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

"Agency" means the entity on whose behalf the Division of Purchase and Property entered into the Contract. The Agency is the intended beneficiary of the Contract.

"Agency Request" means a request made by an Agency for offers or proposals to provide the sought after goods and/or services as specified herein.

"Bidder" means any person or entity submitting a proposal in response to the Agency Request for the purpose of obtaining a contract to provide the tangible items and/or services specified in the Agency Request.

"Contract" means a mutually binding legal relationship obligating the Contractor to furnish supplies and/or services and the buyer to pay for them, subject to appropriation where the Agency derives its annual budget by means of appropriation from the State Legislature. The Contract consists of these Standard Terms and Conditions, the Agency Request, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the "contract" does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract. The Contract can only be modified or amended by the Director; using Agencies have no authority to modify or amend the Contract. The State will not be bound by any attempt to modify or amend the Contract without the prior written approval of the Director.

"Contractor" means the person or entity which submits a proposal in response to the Agency Request and to whom (or which) the Contract is awarded.

"Designee" means the representative of a specific public official or Agency, as defined above, duly authorized by same to conduct specific activities and who also has the power to legally bind the official or Agency within the scope of the Contract. Actions taken by an unauthorized designee or which are beyond the scope of the designee's authorization or beyond the scope of the Contract are ultra vires and have no legal or equitable effect.

"Director" means the Director of the New Jersey Division of Purchase and Property or the designee thereof.

"Division" means the New Jersey Division of Purchase and Property.

"Fixed-Price Contract" means a contract that provides for a firm price for the entire term of the Contract (including all extensions), subject to any contractual conditions allowing price adjustment, under which the contractor bears the full responsibility for profit or loss.

"Project" means the initiative, enterprise, undertaking or services for which the Contractor was contracted.

"Shall" denotes a mandatory condition.

"State" means the State of New Jersey and its agencies.

II. APPLICABILITY AND INCORPORATION OF STANDARD TERMS AND CONDITIONS: These Standard Terms and Conditions will apply to all services contracts made by the Director on behalf of the Agency. These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is specifically instructed otherwise in the Agency Request or in any amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the Agency Request and should be read in conjunction with same unless the Agency Request specifically indicates otherwise.

III. CONTRACTOR'S STATUS AND RESPONSIBILITIES:

A. CONTRACTOR'S STATUS: The Contractor's status shall be that of an independent contractor and not that of an employee of the State.

- B. CONTRACTOR'S CERTIFICATION AS TO ITS REPRESENTATIONS:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for rescission of the contract award. In addition, the Contractor's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor's enforcement of its rights under the Contract including any and all claims at law or equity.
- C. CONTRACTOR'S PERFORMANCE:** The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract. To perform these services, the Contractor shall employ or engage the services of qualified persons and/or entities at its own expense except as otherwise specified in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the State of any changes in circumstances which might affect the Contractor's ability to be awarded or to perform its obligations under the Contract.
- D. RESPONSIBILITIES OF CONTRACTOR:**
- (1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details known immediately to the Division and Agency.
 - (2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or Agency, of any rights under the agreement or of any cause of action arising out of the Contractor's performance of the Contract.
 - (3) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or Agency, has or may have for latent defects or errors or other breaches of warranty or negligence.
 - (4) Should the Contractor hire, employ or otherwise engage subcontractors, the Contractor shall be considered the prime Contractor and the sole point of contact with regard to contractual matters. The Contractor assumes sole and full responsibility for the complete performance contemplated by the Contract including the performance of all subcontractors.
 - (5) When the Contractor intends to subcontract for any work under the Contract, the subcontractor must be approved by the Director in writing. It is understood, however, that consent of the Director for the subcontracting of any work under the Contract in no way relieves the Contractor from its full obligations under the Contract. The Contractor shall at all times give due attention to the fulfillment of the Contract and shall keep the work under its control. Consent to the subcontracting of any part of the work by the Director in writing shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the subcontractor. The Contractor, shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of the Contract and all requirements of law. The failure of any subcontractor to adhere to the terms of the Contract or requirements of law may, in the Director's discretion, be cause for rescission of the contract award.
 - (6) All payments for services under the Contract will be made only to the Contractor. The Contractor assumes sole and full responsibility for any payments due to its subcontractors under the Contract.
 - (7) Nothing herein or in the Contract shall be construed as creating a contractual relationship between any subcontractor and the State and/or the Agency.
 - (8) The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the State or Agency may have against the Contractor.
- E. INVESTIGATION:** By submitting a proposal in response to the Agency Request, the bidder certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right

to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.

F. PRICE FLUCTUATION DURING CONTRACT: Unless otherwise set forth in a writing by the Director, or the Director's designee, all prices quoted shall be firm and not be subject to increase during the duration of the Contract. However, in the event of a manufacturer's price or contractor's cost decrease during the Contract period, the State shall receive the full benefit of such price/cost reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified in writing of any price reduction within five (5) days of the effective date. Failure to report and/or pass on price reductions may result in the rescission of the contract award for cause.

G. COST LIABILITY: The State assumes no responsibility and no liability for costs incurred by the bidder prior to the award of the Contract and thereafter only as specifically provided in the Contract.

H. INDEMNITY/LIABILITY TO THIRD PARTIES:

(1) The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.

(2) The Contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

(3) The Contractor further agrees that:

(a) any approval by the State or Agency of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;

(b) the State and Agency assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of the Contract; and

(c) the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State or Agency from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

I. INSURANCE: The Contractor shall procure and maintain at its own expense, until at least two years after the completion of all work performed under the Contract, extensions and/or modifications thereto, liability insurance for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. By submitting a proposal in response to the Agency Request, the Contractor expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the State from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.

(1) The required types and minimum amount of insurance are as follows:

(a) Comprehensive General Liability Insurance: Comprehensive General Liability Insurance policy shall name the State and/or Agency, their officers and employees as additional insureds. The coverage to be provided under this policy shall be at least as broad as the standard, basic, unamended and unendorsed comprehensive general liability policy and shall include contractual liability coverage. The minimum limits of liability for this insurance shall be as follows:

Bodily Injury Liability:

Each Person: \$1,000,000
Each Occurrence: \$5,000,000

Property Damage Liability:

Each Person: \$1,000,000
Each Occurrence: \$5,000,000

- (b) Comprehensive Automobile Liability Insurance: The Comprehensive Automobile Liability Insurance policy shall name the State and/or Agency, their officers and employees as additional insureds. The Comprehensive Automobile Liability policy shall cover owned, non-owned, leased, rented and hired vehicles with minimum limits as follows:

Bodily Injury and Property Damage Liability:

Each Person: \$ 1,000,000
Each Occurrence: \$3,000,000

- (c) Workers' Compensation and Employers' Liability: Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any state which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall be provided with a limit of liability of not less than

Bodily Injury: \$500,000
Each Occurrence: \$500,000
Disease (each employee): \$500,000
Disease (aggregate limit): \$1,000,000

- (d) Professional Liability Insurance: When it is common to the Contractor's profession to do so, the Contractor shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor from any liability arising out the professional obligations performed pursuant to the requirements of the Contract. The insurance shall be in the amount of not less than \$5,000,000 and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

- (2) The Contractor shall, prior to commencement of the work required under the Contract, provide the Director with a valid original Certificates of Insurance (and a copy thereof to the Agency) as evidence of the Contractor's insurance coverage in accordance with the foregoing provisions. Such certificates of insurance shall specify that the insurance provided is of the types and is in the amounts required in 1(a), (b), (c) and (d) above.

The certificates shall provide for thirty (30) days written notice to the Director and Agency prior to any cancellation, expiration or non-renewal of insurance during the term required in the Contract, extensions and/or modifications thereto. The Contractor shall further be required to provide the Director with a valid original certificates of renewal of the insurance (and a copy thereof to the Agency) upon the expiration of the policies. The Contractor shall also, upon request, promptly provide the Division and/or Agency with copies of each policy required under these Standard Terms and Conditions and the Contract, certified by the agent or underwriter to be true copies of the policies provided to the Contractor. All certificates and copies of insurance policies shall be forwarded to the State's address as listed herein.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of these Standard Terms and Conditions and the Contract to maintain insurance, i.e. two (2) years after the expiration of the Contract, said certificates shall be acceptable, but the vender shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Agency is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

In the event the Contractor fails or refuses to renew any of its insurance policies as necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements

of these Standard Terms and Conditions or the Contract, the State and/or Agency may refuse to make payment of any further amounts due under the Contract or refuse to make payments due or coming due under other agreements between the Contractor and the State. The State, in its sole discretion, may use funds retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Director may, at the Director's option, either suspend work under the Contract or proceed to default the Contractor and thereby rescind the contract award.

- J. AVAILABILITY OF RECORDS:** The Contractor shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to additional services required by the State on the Project. Such records shall be maintained and available for the State's and/or Agency's inspection as to all aspects of the work, whether performed by the Contractor or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) fiscal years after the expiration of the State's fiscal year in which the Contract expires or in which final payment is received by the Contractor under the Contract, whichever occurs later. (The State's fiscal year is from July 1 through June 30). The Director has the right to request, and Contractor agrees to furnish free of charge, all information and copies of all records which the Director requests. The Contractor shall allow the Director and/or Agency to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate with the Director and/or Agency may be, at the Director's discretion, cause for rescission of the contract award and/or suspension or debarment of the Contractor from State contracts.
- K. DATA CONFIDENTIALITY:** All data contained in documents supplied by the State or Agency after the award of the Contract, any data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered confidential and shall be solely for the use of the provider of the information. The Contractor is required to use reasonable care to protect the confidentiality of the data including, but not limited to, requiring incorporation of this term into its contract with its subcontractor(s), if any. Any use, sale or offering of this data in any form by the Contractor, its employees, subcontractors or assignees will be considered a violation of this contract and will cause the infraction to be reported to the State Attorney General for possible prosecution. Penalties for violations of such guarantees include, but are not limited to, rescission of the contract award and/or legal action without the State being liable for damages, costs and/or attorney fees. The Contractor shall be liable for any and all damages arising from its breach of this confidentiality provision.
- L. NO WAIVER OF WARRANTIES OR REMEDIES AT LAW OR EQUITY:** Nothing in the Contract shall be construed to be a waiver by the State or Agency of any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by the Director. Further, nothing in the Contract shall be construed to be a waiver by the State or Agency of any remedy available to the State or Agency under the Contract, at law or equity except as specifically and expressly stated in a writing executed by the Director.
- M. OWNERSHIP OF DOCUMENTS:** All documents and records, regardless of form, prepared by the Contractor in fulfillment of the Contract shall be transmitted to the Agency and shall become the property of the State.
- N. PUBLICITY:** Publicity and/or public announcements pertaining to the project shall be approved by the Agency prior to release.

IV. CONTRACTUAL RELATIONSHIP:

- A. ASSIGNMENT:** The Contractor shall not assign or transfer its obligations or rights under the Contract without the prior written consent of the Director. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Director shall not relieve the Contractor of any duty, obligation or liability assumed by it under the Contract and shall be cause for rescission of the contract award.
- B. MERGERS, ACQUISITIONS AND DISSOLUTION:**
- (1) Merger or Acquisition: If, subsequent to the award of any contract resulting from the Agency Request, the Contractor shall merge with or be acquired by another firm, for purposes of this contract only, the documents set forth below must be submitted to the Director for approval within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in rescission of the contract award for cause. Any such merger or acquisition will require the assignment of the Contract pursuant to the provisions related thereto set forth herein.

- (a) Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the Contract terms, conditions and prices, as may be amended.
 - (b) State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to the provisions contained herein.
 - (c) Vendor Federal Employer Identification Number.
 - (d) Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Director.
- (2) Dissolution: If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.
- D. NOTICE: The Contractor shall promptly provide notice to the Director and Agency of all information related to its merger, acquisition and/or dissolution.

V. ADDITIONAL TERMS:

- A. CONTRACT AMOUNT: The estimated amount of the contract(s), when stated in the Agency Request, shall not be construed as either the maximum or minimum amount which the State and/or the Agency shall be obligated to order or expend as the result of the Agency Request or any contract entered into as a result of the Agency Request.

B. PERFORMANCE SECURITY:

- (1) Performance Security: If performance security is required in the Agency Request, the successful bidder shall furnish performance security in such amount on any award of the Contract or line item purchase. See, N.J.A.C. 17:12-2.3. Acceptable forms of performance security are as follows:
- (a) an irrevocable security in the amount listed in the Agency Request payable to the Treasurer, State of New Jersey, binding the Contractor to provide faithful performance of the Contract; and
 - (b) a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey, as beneficiary issued by a federally insured financial institution.
 - (c) The amount of the performance security will be stated on the cover sheet to the Agency Request. If the requirement for performance security is expressed as a percentage, security will be required only if the total amount of the Contract exceeds \$50,000.

The Performance Security must be submitted to the Director within thirty (30) days of the effective date of the contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in rescission of the contract award for cause and nonpayment for work performed.

- C. TIME PERIODS: The Director may extend or shorten any time period specified in the Contract for good cause. Moreover, when, in the discretion of the Director, non-performance by the Contractor may affect the health, safety or welfare of the State, the Director may dispense with any time period specified Paragraph VII B herein.

VI. MANDATORY COMPLIANCE WITH LAW: The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the State, the Director, the Division or the Agency. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and are available for review at the State Library, 185 W. State Street, Trenton, New Jersey 08625.

A. CORPORATE AUTHORITY:

- (1) All New Jersey corporations must obtain a Certificate of Incorporation from the Office of the New Jersey Secretary of State prior to conducting business in the State of New Jersey.
- (2) If a bidder is a corporation incorporated in a state other than New Jersey, the Contractor must obtain a Certificate of Authority to do business from the Office of the Secretary of State of New Jersey prior to receipt of the final contract award. Within seven (7) days of its receipt of a notice of intent to award, the successful bidder shall provide either a certification or notification of filing with the Secretary of State. Failure to comply may result in the Division's withdrawing the notice of intent to award.

If the bidder awarded a contract is an individual, partnership or joint venture not residing in this State or a partnership organized under the laws of another state, then the bidder shall execute a power of attorney designating the Secretary of State as his true and lawful attorney for the sole purpose of receiving process in any civil action which may arise out of the performance of this contract or agreement. The appointment of the Secretary of State shall be irrevocable and binding upon the bidder, his heirs, executors, administrators, successors or assigns. Within ten (10) days of receipt of this service, the Secretary of State shall forward same to the bidder at the address designated in the bidder's proposal.

- B. AFFIRMATIVE ACTION:** The Contractor shall not discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 thorough N.J.S.A. 10:2-4, inclusive, N.J.S.A. 10:5-1, et seq., and N.J.S.A. 10:5-38 and all rules and regulations issued thereunder as set forth in the attached Supplement to Bid Specifications.
- C. AMERICANS WITH DISABILITIES ACT:** The Contractor shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq.
- D. OWNERSHIP DISCLOSURE:** Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the bidder disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- E. BIDDER'S WARRANTY:** By submitting a proposal in response to the Agency Request, the bidder warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in rescission of the contract award without the State being liable for damages, costs and/or attorney fees or, in the Director's discretion, a deduction from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
- F. MACBRIDE PRINCIPLES:** The Contractor shall comply with the MacBride principles of nondiscrimination in employment and have no business operations in Northern Ireland as set forth in N.J.S.A. 52:34-12.2.
- G. CODES:** The Contractor shall comply with the requirements of the New Jersey Uniform Commercial Code, the latest National Electrical Code, Building Officials & Code Administrators International, Inc. (B.O.C.A.) Basic Building Code and Occupational Safety and Health Administration to the extend applicable to the Contract.
- H. SET-OFF FOR STATE TAXES AND CHILD SUPPORT:** Pursuant to N.J.S.A. 54:49-19, if the Contractor is entitled to payment under the Contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the State Treasurer may set off that payment by the amount of the indebtedness.
- I. STANDARDS PROHIBITING CONFLICTS OF INTEREST:** The following prohibitions on vendor activities shall apply to all contracts and purchase agreements made with the State or Agencies:

- (1) No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- (2) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- (3) No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.
- (4) No Contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- (5) No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- (6) The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

VII. PROJECT SUSPENSION AND RESCISSION OF THE CONTRACT AWARD:

- A. SUSPENSION OF PROJECT:** If, for any reason, the project for which the Contractor's services were contracted should be suspended, the Director may suspend this contract upon seven (7) days written notice to the Contractor. Upon receipt of such notice, unless otherwise directed in writing by the Director, the Contractor shall immediately discontinue all work under the Contract. Upon such notification the Contractor shall be paid a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services completed under the Contract, less payments previously made. The State may order that the work on the project be stopped temporarily, and upon seven (7) days written notice from the Director, the Contractor shall cease all work on the project except as necessary to properly secure the project. If the State directs that the work on the project resume within six (6) months, the Contractor shall be obliged to complete the project for the basic fee provided for in this contract, plus additional compensation for any work necessitated by the stop order as approved by the Director in writing.

However, in the event that services are scheduled to end either by contract expiration or by rescission of the contract award by the Director (at the State's discretion), it shall be incumbent upon the Contractor to continue the service if requested by the Director to do so, until new services, if any, are completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration or rescission date of the existing contract, except by agreement of the parties. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the Director.

- B. RESCISSION OF THE CONTRACT AWARD:** The Director may rescind the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:

- (1) Change of Circumstances: Where circumstances change and/or the needs of the State or Agency change, or the Contract is otherwise deemed by the Director to no longer be in the public interest, the Director may rescind the contract award upon no less than thirty (30) days notice to the Contractor . In the event of such a rescission of the contract award, the Contractor shall furnish to the Agency, free of charge, such close-out reports as may reasonably be required.
- (2) For Cause:
 - (a) Where a Contractor fails to perform or comply with the Contract and/or fails to comply with the complaints procedure set forth in N.J.S.A. 17:12-4.2, et seq., the Director may rescind the contract award upon ten (10) days notice to the Contractor with an opportunity to protest said rescission and/or request an informal hearing. If the Contractor protests, the Director will complete the informal hearing, if necessary, and issue a final agency decision regarding rescission of the contract.
 - (b) Where a Contractor continues to perform a contract poorly as demonstrated by one or more formal complaints resolved against it, the Director, or the Director's designee, may issue a Notice of Intent to Rescind the Contract Award with a ten (10) day opportunity for the Contractor to protest such rescission and/or request an informal hearing. If the Contractor protests, the Director will complete the hearing, if necessary, and issue a final agency decision regarding rescission and related issues including, but not limited to, damages payable to the State, subject to Paragraph VII B(5).
 - (c) The Director's right to rescind the contract award for cause includes any reason set forth in any other provision contained in the Contract.
 - (d) The failure of a Contractor to respond to the Director's notice of intent to rescind the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Director.
 - (e) The Director's right to rescind the contract award for cause includes the Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the contractor to fulfill its contractual obligations. The Director may also rescind any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- (3) In cases of emergency, the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- (4) Upon a rescission of the contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered to the date of rescission that portion of the fee which the services actually and satisfactorily performed by it, as determined by the Director, shall bear to the total services contemplated under this contract, less payments previously made.
- (5) Upon rescission of the contract award, the Director may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been rescinded the difference in price, and the said Contractor shall be liable for same.
- (6) All protests of the Director's intent to rescind a contract award must be accompanied by a statement of the factual and/or legal basis of the protest and copies of all documents which the Contractor believes supports its position.
- (7) If Director determines that an informal hearing is required, said informal hearing shall be conducted by the Director, or the designee thereof, prior to the issuance of the final agency decision regarding the interpretation of the Contract, Contractor performance and/or rescission of the contract award.

VIII. CONTRACTOR COMPENSATION:

- A. PAYMENT TO CONTRACTOR:** The Contractor is authorized to submit invoices monthly for tasks and/or sub-tasks satisfactorily completed. However, payment for goods and/or services purchased by the State or Agency will only be made against Official New Jersey Payment Voucher along with supporting documentation substantiating that the work has been satisfactorily completed. Invoices must reference the tasks and/or sub-

tasks detailed in the scope of work and must be in strict accordance with the firm fixed prices submitted for each task and/or sub-task of the Contract and shall otherwise be in accordance with the terms of the Contract. The State bill form in duplicate together with the original Bill of Lading, express receipt or other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the Agency. Notwithstanding Section VIII B, payment will not be made until the Agency has approved payment.

B. **NEW JERSEY PROMPT PAYMENT ACT:** The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32, et seq. requires State agencies to pay for goods and services within sixty (60) days of the Agency's receipt of a properly executed New Jersey Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the Division prior to processing any payments for goods and services accepted by the State and/or the Agency. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid unless it exceeds \$5.00 per properly executed invoice. A good faith dispute creates an exception to the Prompt Payment Act. Except as noted above, cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

C. **AVAILABILITY OF FUNDS:** The State's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are made available each fiscal year to the using agency by the State Legislature.

D. **RETAINAGE:** If retainage is required on the Contract, the State and/or Agency will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Contractor and acceptance by the Agency of all services, deliverables or work products required by the Contract.

For ongoing term contracts, the Agency will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Agency will review the Contractor's performance and if performance has been satisfactory, the Agency will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Contractor after certification by the Agency's project manager, if any, that all services have been satisfactorily performed.

IX. **NOTICES:** All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Agency and/or Division upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.

X. **CLAIMS:** The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or rescission of the contract award:

A. No dispute concerning the interpretation of the Contract and/or Contractor's performance under the Contract shall be deemed a contested case as defined in the Administrative Procedure Act, or the regulations promulgated thereunder. Any such dispute shall be subject to an informal hearing by the Director, or the designee thereof, if the Director determines that an informal hearing is necessary to resolve the issue(s). The Director's final decision shall be deemed a final agency action reviewable by the Superior Court of New Jersey, Appellate Division.

B. All claims asserted against the State and/or Agency by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. For claims against the State related to final agency decisions rendered by the Director regarding the interpretation of the Contract, the Contractor's performance or rescission of the contract award only, the claim shall not accrue and the time period for performing any act required by N.J.S.A. 59:8-8 and N.J.S.A. 59:13-5 shall not commence until a decision is rendered by the Superior Court of New Jersey, Appellate Division (or by the Supreme Court of New Jersey if appealed) that the Contract was improperly interpreted and/or rescinded.

XI. **APPLICABLE LAW:** This agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF
THIS AGREEMENT

NAME

TITLE

DATE

OWNERSHIP DISCLOSURE FORM

Page 1

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If additional space is necessary, provide on an attached sheet.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)
------	--------------	---------------	-------------	--

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations, and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on an attached sheet. **If there are no owners with 10% or more interest in your firm, enter "None" below.** Complete the certification at the bottom of this form. If this form has previously been submitted to the Purchase Bureau in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)
------	--------------	---------------	-------------	--

_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

COMPLETE ALL QUESTIONS BELOW

- | | YES | NO |
|---|-------|-------|
| 1. Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? <i>(If yes, complete and attach a separate disclosure form reflecting previous ownership interests.)</i> | _____ | _____ |
| 2. Has any person or entity listed in this form or its attachments ever been arrested, charged, indicted or convicted in a criminal or disorderly persons matter by the State of New Jersey, any other state or the U.S. government? <i>(If yes, attach a detailed explanation for each instance.)</i> | _____ | _____ |
| 3. Has any person or entity listed in this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any agency of government from bidding or contracting to provide services, labor, material or supplies? <i>(If yes, attach a detailed explanation for each instance.)</i> | _____ | _____ |
| 4. Are there now any criminal matters or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? <i>(If yes, attach a detailed explanation for each instance.)</i> | _____ | _____ |
| 5. Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation. <i>(If yes to any part of this question, attach a detailed explanation for each instance.)</i> | _____ | _____ |

CERTIFICATION: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that **I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers or information contained herein.** I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option, may declare any contract(s) resulting from this certification void and unenforceable.

I, being duly authorized, certify that the information supplied above, including all attached pages, is complete and correct to the best of my knowledge. I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: _____

(Signature)

PRINT OR TYPE

{
{
{

(Name)

(Title)

NOTICE TO ALL BIDDERS
SET-OFF FOR STATE TAX

Please be advised that, pursuant to P.L. 1995, c.159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

NOTICE TO ALL BIDDERS
REQUIREMENT TO PROVIDE A CERTIFICATION
IN COMPLIANCE WITH MacBRIDE PRINCIPLES
AND NORTHERN IRELAND ACT OF 1989

Pursuant to Public Law 1995, c.134, a responsible bidder selected, after public bidding, by the Director of the Division of Purchase and Property, pursuant to N.J.S.A. 52:34-12, or the Director of the Division of Building and Construction, pursuant to N.J.S.A. 52:32-2, must complete the certification below by checking one of the two representations listed and signing where indicated. If a bidder who would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Directors may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another bidder who has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Directors find contractors to be in violation of the principles which are the subject of this law, they shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I certify, pursuant to N.J.S.A. 52:34-12.2, that the entity for which I am authorized to bid:

_____ has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein through the operation of offices, plants, factories, or similar facilities, either directly or indirectly, through intermediaries, subsidiaries or affiliated companies over which it maintains effective control; or

_____ will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.8 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

Signature of Bidder

Print or type

{ _____
{ _____ Name
{ _____
Title

SUPPLEMENT TO BID SPECIFICATIONS

DURING THE PERFORMANCE OF THIS CONTRACT, THE CONTRACTOR AGREES AS FOLLOWS:

1. THE CONTRACTOR OR SUBCONTRACTOR, WHERE APPLICABLE, WILL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF AGE, RACE, CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS OR SEX. THE CONTRACTOR WILL TAKE AFFIRMATIVE ACTION TO ENSURE THAT SUCH APPLICANTS ARE RECRUITED AND EMPLOYED, AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT, WITHOUT REGARD TO THEIR AGE, RACE CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS OR SEX. SUCH ACTION SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING: EMPLOYMENT, UPGRADING, DEMOTION, OR TRANSFER; RECRUITMENT OR RECRUITMENT ADVERTISING; LAYOFF OR TERMINATION; RATES OF PAY OR OTHER FORMS OF COMPENSATION; AND SELECTION FOR TRAINING, INCLUDING APPRENTICESHIP. THE CONTRACTOR AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES TO BE PROVIDED BY THE PUBLIC AGENCY COMPLIANCE OFFICER SETTING FORTH PROVISIONS OF THIS NONDISCRIMINATION CLAUSE;
2. THE CONTRACTOR OR SUBCONTRACTOR, WHERE APPLICABLE WILL, IN ALL SOLICITATIONS OR ADVERTISEMENTS, FOR EMPLOYEES PLACE BY OR ON BEHALF OF THE CONTRACTOR, STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT WITHOUT REGARD TO AGE, RACE, CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS OR SEX;
3. THE CONTRACTOR OR SUBCONTRACTOR, WHERE APPLICABLE, WILL SEND TO EACH LABOR UNION OR REPRESENTATIVE OR WORKERS WITH WHICH IT HAS A COLLECTIVE BARGAINING AGREEMENT OR OTHER CONTRACT OR UNDERSTANDING, A NOTICE, TO BE PROVIDED BY THE AGENCY CONTRACTING OFFICER ADVISING THAT LABOR UNION OR WORKERS' REPRESENTATIVE OF THE CONTRACTOR'S COMMITMENTS UNDER THIS ACT AND SHALL POST COPIES OF THE NOTICE IN CONSPICUOUS PLACES AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT.
4. THE CONTRACTOR OR SUBCONTRACTOR, WHERE APPLICABLE, AGREES TO COMPLY WITH THE REGULATIONS PROMULGATED BY THE TREASURER PURSUANT TO P.L. 1975, C. 127, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME.
5. THE CONTRACTOR OR SUBCONTRACTOR AGREES TO ATTEMPT IN GOOD FAITH TO EMPLOY MINORITY AND FEMALE WORKERS CONSISTENT WITH THE APPLICABLE COUNTY EMPLOYMENT GOALS PRESCRIBED BY N.J.A.C 17:27-5.2 PROMULGATED BY THE TREASURER PURSUANT TO P.L. 1975, C. 127, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME OR IN ACCORDANCE WITH A BINDING DETERMINATION OF THE APPLICABLE COUNTY EMPLOYMENT GOALS DETERMINED BY THE AFFIRMATIVE ACTION OFFICE PURSUANT TO N.J.A.C 17:27-5.2 PROMULGATED BY THE TREASURER PURSUANT TO P.L. 1975, C. 127, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME.
6. THE CONTRACTOR OR SUBCONTRACTOR AGREES TO INFORM IN WRITING APPROPRIATE RECRUITMENT AGENCIES IN THE AREA, INCLUDING EMPLOYMENT AGENCIES, PLACEMENT BUREAUS, COLLEGES, UNIVERSITIES, LABOR UNIONS, THAT IT DOES NOT DISCRIMINATE ON THE BASIS OF AGE, CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS OR SEX, AND THAT IT WILL DISCONTINUE THE USE OF ANY RECRUITMENT AGENCY WHICH ENGAGES IN DIRECT OR INDIRECT DISCRIMINATORY PRACTICES.
7. THE CONTRACTOR OR SUBCONTRACTOR AGREES TO REVISE ANY OF ITS TESTING PROCEDURES, IF NECESSARY, TO ASSURE THAT ALL PERSONNEL TESTING CONFORMS WITH THE PRINCIPLES OF JOB-RELATED TESTING, AS ESTABLISHED BY THE STATUTES AND COURT DECISIONS OF THE STATE OF NEW JERSEY AND AS ESTABLISHED BY APPLICABLE FEDERAL LAW AND APPLICABLE FEDERAL COURT DECISIONS.
8. THE CONTRACTOR OR SUBCONTRACTOR AGREES TO REVIEW ALL PROCEDURES RELATING TO TRANSFER, UPGRADING, DOWNGRADING AND LAYOFF TO ENSURE THAT ALL SUCH ACTIONS ARE TAKEN WITHOUT REGARD TO AGE, CREED, COLOR, NATIONAL ORIGIN, ANCESTRY, MARITAL STATUS OR SEX, AND CONFORM WITH THE APPLICABLE EMPLOYMENT GOALS, CONSISTANT WITH THE STATUTES AND COURT DECISIONS OF THE STATE OF NEW JERSEY, AND APPLICABLE FEDERAL LAW AND APPLICABLE FEDERAL COURT DECISIONS.

THE CONTRACTOR AND ITS SUBCONTRACTORS SHALL FURNISH SUCH REPORTS OR OTHER DOCUMENTS TO THE AFFIRMATIVE ACTION OFFICE AS MAY BE REQUESTED BY THE OFFICE FROM TIME TO TIME IN ORDER TO CARRY OUT THE PURPOSES OF THESE REGULATIONS, AND PUBLIC AGENCIES SHALL FURNISH SUCH INFORMATION AS MAY BE REQUESTED BY THE AFFIRMATIVE ACTION OFFICE FOR CONDUCTING A COMPLIANCE INVESTIGATION PURSUANT TO SUBCHAPTER 10 OF THE ADMINISTRATIVE CODE (NJAC 17:27).

- * NO FIRM MAY BE ISSUED A PURCHASE ORDER OR CONTRACT WITH THE STATE UNLESS THEY COMPLY WITH THE AFFIRMATIVE ACTION REGULATIONS.

PLEASE CHECK APPROPRIATE BOX (ONLY ONE)

- ☐ I HAVE A CURRENT NEW JERSEY AFFIRMATIVE ACTION CERTIFICATE, (PLEASE ATTACH A COPY TO YOUR PROPOSAL).
- ☐ I HAVE A VALID FEDERAL AFFIRMATIVE ACTION PLAN APPROVAL LETTER, (PLEASE ATTACH A COPY TO YOUR PROPOSAL).
- ☐ I HAVE COMPLETED THE ENCLOSED FORM AA302 AFFIRMATIVE ACTION EMPLOYEE INFORMATION REPORT.

AFFIRMATIVE ACTION EMPLOYEE INFORMATION REPORT

IMPORTANT: READ INSTRUCTIONS ON BACK OF FORM CAREFULLY BEFORE COMPLETING FORM. TYPE OR PRINT IN SHARP BALL POINT PEN. FAILURE TO PROPERLY COMPLETE THE ENTIRE FORM MAY DELAY ISSUANCE OF YOUR CERTIFICATE

SECTION A - COMPANY IDENTIFICATION

1. FID.NO OR SOCIAL SECURITY		2. TYPE OF BUSINESS <input type="checkbox"/> 1. MFG. <input type="checkbox"/> 2. SERVICE <input type="checkbox"/> 3. WHOLESALE <input type="checkbox"/> 4. RETAIL <input type="checkbox"/> 5. OTHER				3. TOTAL NO. EMPLOYEES IN THE ENTIRE COMPANY			
4. COMPANY NAME									
5. STREET		CITY		COUNTY		STATE		ZIP CODE	
6. NAME OF PARENT OR AFFILIATED COMPANY (IF NONE, SO INDICATE)				CITY		STATE		ZIP CODE	
7. DOES THE ENTIRE COMPANY HAVE A TOTAL OF AT LEAST 50 EMPLOYEES? YES <input type="checkbox"/> NO <input type="checkbox"/>									
8. CHECK ONE: IS THE COMPANY: <input type="checkbox"/> SINGLE-ESTABLISHMENT EMPLOYER <input type="checkbox"/> MULTI-ESTABLISHMENT EMPLOYER									
9. IF MULTI-ESTABLISHMENT EMPLOYER, STATE THE NUMBER OF ESTABLISHMENTS IN N.J. <input type="text"/>									
10. TOTAL NUMBER OF EMPLOYEES AT ESTABLISHMENT WHICH HAS BEEN AWARDED THE CONTRACT <input type="text"/>									
11. PUBLIC AGENCY AWARDDING CONTRACT				CITY		STATE		ZIP CODE	

OFFICIAL USE ONLY

DATE RECEIVED-MO/DAY/YR				ASSIGNED CERTIFICATION NUMBER			

SECTION B - EMPLOYMENT DATA

12. Report all permanent, temporary and part-time employees ON YOUR OWN PAYROLL. Enter the appropriate figures on all lines and in all columns. Where there are no employees in a particular category, enter a zero. Include ALL employees, not just those in minority categories, in columns 1,2 & 3.

JOB CATEGORIES	ALL EMPLOYEES			MINORITY GROUP EMPLOYEES (Permanent)							
	Col. 1 TOTAL <i>(Cols. 2&3)</i>	Col. 2 MALE	Col. 3 FEMALE	MALE				FEMALE			
				BLACK	HISPANIC	AMERICAN INDIAN	ASIAN	BLACK	HISPANIC	AMERICAN INDIAN	ASIAN
Officials and Managers											
Professionals											
Technicians											
Sales Workers											
Office and Clerical											
Craftworkers (Skilled)											
Operatives (Semi-skilled)											
Laborers (Unskilled)											
Service Workers											
TOTAL											
Total employment from Previous Report <i>(If any)</i>											
The data below shall NOT be included in the figures for the appropriate categories above.											
Temporary and Part-time Employees											
13. HOW WAS INFORMATION AS TO RACE OR ETHNIC GROUP IN SECTION B OBTAINED? <input type="checkbox"/> 1. VISUAL SURVEY <input type="checkbox"/> 2. EMPLOYMENT RECORD <input type="checkbox"/> 3. OTHER (Specify)						15. IS THIS THE FIRST EMPLOYEE INFORMATION REPORT (AA-302) SUBMITTED? 1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/>		16. IF NO, DATE OF LAST REPORT SUBMITTED MO. DAY YEAR			
14. DATES OF PAYROLL PERIOD USED FROM: TO:											

SECTION C - SIGNATURE AND IDENTIFICATION

17. NAME OF PERSON COMPLETING FORM (Print or Type) <i>(CONTRACTOR EEO OFFICER)</i>		SIGNATURE		TITLE		DATE MO. DAY YEAR	
18. ADDRESS (NO. & STREET) (City)		(State)		(Zip Code)		Phone (Area Code, No., Extension)	

INSTRUCTIONS FOR COMPLETING THE AFFIRMATIVE ACTION EMPLOYEE INFORMATION REPORT (FORMAA302)

IMPORTANT: READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE FORM. PRINT OR TYPE ALL INFORMATION. FAILURE TO PROPERLY COMPLETE THE ENTIRE FORM MAY DELAY ISSUANCE OF YOUR CERTIFICATE.

ITEM 1 - Enter the Federal Identification Number assigned to the contractor or vendor by the Internal Revenue Service, or if a Federal Employer Identification Number has been applied for, but not yet issued, write the words "applied for",
or

If your business is such that you have not, or will not receive a Federal Employer Identification Number, enter the Social Security Number assigned to the single owner or to a partner, in case of a partnership.

ITEM 2 - Check the box appropriate to your TYPE OF BUSINESS. If you are engaged in more than one type of business check the predominate one. If you are a manufacturer deriving more than 50% of your receipts from your own retail outlets, check "Retail".

ITEM 3 - Enter the total "number" of employees in the entire company, including part-time employees. This number shall include all facilities in the entire firm or corporation.

ITEM 4 - Enter the name by which the company is identified. If there is more than one company name, enter the predominate one.

ITEM 5 - Enter the physical location of the company. Include City, County, State and Zip Code.

ITEM 6 - Enter the name of any parent or affiliated company including the City, State and Zip Code. If there is none, so indicate by entering "None" or N/A.

ITEM 7 - Check the appropriate box for the total number of employees in the entire company. "Entire Company" shall include all facilities in the entire firm or corporation, including part-time employee, not just those employees at the facility being awarded the contract.

ITEM 8 - Check the box appropriate to your type of company establishment. Single-establishment Employer shall include an employer whose business is conducted at only one physical location. Multi-establishment Employer shall include an employer whose business is conducted at more than one location.

ITEM 9 - If multi-establishment was entered in item 8, enter the number of establishments within the State of New Jersey.

ITEM 10 - Enter the total number of employees at the establishment being awarded the contract.

ITEM 11 - Enter the name of the Public Agency awarding the contract. Include City, State and Zip Code.

ITEM 12 - Enter the appropriate figures on all lines and in all columns. THIS SHALL ONLY INCLUDE EMPLOYMENT DATA FROM THE FACILITY THAT IS BEING AWARDED THE CONTRACT. DO NOT list the same employee in more than one job category.

Racial/Ethnic Groups will be defined:

Black: Not of Hispanic origin. Persons having origin in any of the Black racial groups of Africa

Hispanic: Persons of Mexican, Puerto Rican, Cuban, or Central or South American or other Spanish culture or origin, regardless of race.

American Indian or Alaskan Native: Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander: Persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes for example, China, Japan, Korea, the Phillipine Islands and Samoa.

ITEM 13 - Check the appropriate box. If the race or ethnic group information was not obtained by 1 or 2, specify by what other means this was done in 3.

ITEM 14 - Enter the dates of the payroll period used to prepare the employment data presented in Item 12.

ITEM 15 - If this is the first time an Employee Information Report has been submitted for this company, check block "Yes".

ITEM 16 - If the answer to Item 15 is "No", enter the date when the last Employee Information Report was submitted by this company.

ITEM 17 - Print or type the name of the person completing the form. Include the signature, title and date.

ITEM 18 - Enter the physical location where the form is being completed. Include City, State, Zip Code and Phone Number.

TYPE OR PRINT IN SHARP BALL POINT PEN

THE CONTRACTOR IS TO COMPLETE THE EMPLOYEE INFORMATION REPORT RENEWAL FORM (AA302) AND RETAIN ONE (1) COPY FOR THE CONTRACTOR'S OWN FILES. FORWARD TWO (2) COPIES TO:

**Affirmative Action Office
Department of the Treasury
State House
P.O. Box 209
Trenton, New Jersey 08625-0209
Telephone No. (609) 292-5475**

PURCHASE BUREAU

CERTIFICATION OF WAIVER FUNDING AVAILABILITY

F. Y. TRANSACTION DATE

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CONTACT FOR INFORMATION

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REQUESTING AGENCY

NAME	NO.
------	-----

NAME, TELEPHONE NUMBER

FUND	ORG CODE	SUBORG	APPR UNIT	ACTIVITY CODE	OBJECT CODE	SUB-OBJ	REV SRCE	SUB-REV	PROJECT/ JOB NUMBER	TOTAL \$

DESCRIPTION

--

COMMODITY CODE: 5 DIGITS

--	--	--	--	--	--	--	--	--	--

TOTAL AMOUNT OF MONEY

\$	
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SIGNATURE CHIEF DEPARTMENTAL FISCAL OFFICER

DATE

I HEREBY CERTIFY THAT FUNDING IS AVAILABLE AND ALL IS IN COMPLIANCE WITH ALL REGULATIONS AND PROCEDURES PROMULGATED BY THE DIVISION OF PURCHASE AND PROPERTY AND THE OMB.

BILL TO: _____

SHIP TO: _____